



TOWN OF HEMPSTEAD
DEPARTMENT OF BUILDINGS

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April 7, 2017

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: WT Docket No. 16-421 Streamlining Deployment of Small Cell Infrastructure

Dear Secretary Dortch:

The Town of Hempstead's March 8, 2017 comments provided a factual record of its experiences to date seeking to accomplish in the Town what the Commission here seeks to accomplish nationally: "streamline deployment" of the best wireless services while "protecting [local] interests within their purview," such as "aesthetics and safety." Public Notice (December 22, 2016) at 2. One commenter, Crown Castle International, Corp., directly addressed the Town's efforts. Since most localities were criticized without being identified and thus could not respond, the Town's response to Crown Castle's misleading claims deserves careful attention.

In its March 8, 2017 comments, Crown Castle claims that the Town of Hempstead, among others, has discouraged deployment of wireless services with "some of the most draconian restrictions in the country." CC Comments at 13. Crown Castle primarily attacks what it calls "escrow fees," but the escrows are not fees at all and are of course refundable if not expended. The Town routinely negotiates reductions of escrows for bulk applications and has done so with Crown Castle. In the Town's experience, the escrow amount is rarely exhausted, so much of the escrow is unused at the completion of a project. These escrows have not discouraged wireless deployment in the Town. Wireless carriers commonly do not even request return of unexpended escrow funds when projects are completed. Crown Castle itself has thus far never requested return of unexpended escrow funds.

Crown Castle cites a current proposed deployment in the Town with \$150,000 in escrows. Far from "typical" as Crown Castle claims, that deployment involves 48 installations with, among other things, new stealthing options for locations in residential rather than commercial or public areas. Furthermore, the Town does not receive any portion of that escrow as fees or revenue.¹ The escrow simply ensures recovery of actual costs of technical review of applications by a Town consultant.

¹ The 5% gross revenue share paid to the Town reflects the fair value of use of public rights-of-way provided to Crown Castle. Other comments by local governments explain that such fees are common and that local governments are required to obtain fair value for such use. Crown Castle suggests that the 5% share was somehow improperly imposed by calling it voluntary but putting "voluntary" in quotation marks. In fact, the Town negotiated the payment with NextG in 2009, and Crown Castle was fully aware of that obligation when it voluntarily chose to assume it with its purchase of NextG.

Crown Castle puts “consultant review” in quotation marks to suggest that retention of a technical consultant is unnecessary or otherwise suspect. The need for consultant review is clear from the factual record of widespread safety and code violations discussed in the Town’s initial comments and the attached Orellana affidavit. The use of a technical consultant ensures timely and reliable review of applications. The Town properly considers whether alternative sites to a carrier proposal are available which would be safe and technically suitable at a reasonable cost while being less intrusive or disruptive to the neighborhood. On the one hand, carriers often challenge suggested alternatives if not supported by a report of a technically qualified consultant, and on the other, carriers suggest that “consultant review” is an unnecessary and improper cost.

Crown Castle offers no factual data to even suggest that the Town’s fees are not entirely justified, much less that they are among the “most draconian” in the country. The amount of the actual building department fees is not unusual and is well justified. The Town is entitled to set fees based on costs of regulation—which includes not just review of carrier applications but also inspections of sites, investigation of violations, and enforcement of Town ordinances. The extensive inspections, investigations and enforcement against wireless facilities in the Town are necessary and appropriate given the widespread violations detailed in the Town’s initial comments, but are not fully covered by the existing fees. These investigations and enforcement actions continue to be necessary, despite the Town’s successful resolution of violations against several wireless carriers operating in the Town. In particular, there are presently thirty-two violations against Crown Castle being prosecuted by the Town for wireless facilities in violation of its building code. See Dkt. 2016NA000001S and related dockets (District Court of Nassau County, Second District, Criminal Part).

The Town has been able to respond and refute these misleading claims only because Crown Castle, to its credit, specifically identified the Town of Hempstead in its comments. While I certainly have not been able to review all the comments submitted, it appears that commenters submitting the vast bulk of these sorts of anecdotal claims of local obstruction have chosen not to identify the local government involved. This makes it impossible for their claims to be answered directly, as in this comment in response, which unfortunately increases the likelihood that their claims are incomplete and misleading, or worse.

Moving beyond the facts of the Town’s particular history, it appears that those commenters seeking a broad range of preemptive federal restrictions on traditional areas of local authority have failed to provide the Commission with the “factual record” which the Commission said was required for its “data-driven evaluation” of ways to streamline local deployment of next-generation wireless services while “preserving local authorities’ ability to protect interests within their purview,” such as “aesthetics and safety.” Public Notice (December 22, 2016) at 2.

There is factual data from the wireless industry on the benefits of the new technology and on scale of the effort to deploy it nationally. And there is factual data on the importance of local regulation and enforcement of safety and aesthetics and other such important local values. Virtually everyone would agree that these interests on both sides are very important for the country. But there is only very limited factual data in the record on the crucial disputed question: the actual extent of overall delay or cost to deployment which results from current local regulations in force around the country. In contrast, the nature and degree of potential harm to legitimate local interests in many parts of the country is clear.

Without “factual data” on whether and how protection of local interests would significantly delay wireless deployment, the Commission cannot conduct a “data-driven” balancing of the nationwide importance of any local delays in deployment against the legitimate local interests to be protected. The wireless carriers and related associations are in the best position to provide a survey of local regulation and its cumulative impact across the country, based on the factual data they have accumulated over decades of experience under the Telecommunications Act—and that factual data should be public so that

it can be verified and evaluated independently. However, they have chosen not to provide such factual data and have relied instead on the claims of their counsel based on anecdotal evidence, most of which is masked, incomplete, and so unverifiable. The unreliability of the claims of Crown Castle as to the Town of Hempstead cautions against crediting their anecdotal claims about local governments whose identity has been masked so that they have no ability to respond.

The local government submissions make clear the importance of local interests in securing fast and efficient wireless deployments while protecting legitimate local interests. The wireless commenters have not submitted reliable factual data that would justify overriding these traditional local interests which Congress has otherwise left to local protection.

Respectively submitted,

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